

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

HALONNAH HOPE SUTTON,

Plaintiff,

v.

NANCY A. BERRYHILL,
Acting Commissioner of Social Security,¹

Defendant.

Case No. 1:16-cv-01580-SKO

ORDER ON PLAINTIFF’S SOCIAL
SECURITY COMPLAINT

(Doc. 1)

I. INTRODUCTION

On October 19, 2016, Plaintiff Halonnah Hope Sutton (“Plaintiff”) filed a complaint under 42 U.S.C. §§405(g) and 1383(c) seeking judicial review of a final decision of the Commissioner of Social Security (the “Commissioner” or “Defendant”) denying her application for Supplemental Security Income (SSI) benefits. (Doc. 1.) The matter is currently before the Court on the parties’ briefs, which were submitted, without oral argument, to the Honorable

¹ On January 23, 2017, Nancy A. Berryhill became the Acting Commissioner of the Social Security Administration. See <https://www.ssa.gov/agency/commissioner.html> (last visited by the court on February 27, 2017). She is therefore substituted as the defendant in this action. See 42 U.S.C. § 405(g) (referring to the “Commissioner’s Answer”); 20 C.F.R. § 422.210(d) (“the person holding the Office of the Commissioner shall, in his official capacity, be the proper defendant”).

1 Sheila K. Oberto, United States Magistrate Judge.²

2 **II. FACTUAL BACKGROUND**

3 On January 29, 2013, Plaintiff protectively filed an application for SSI payments,
4 alleging she became disabled on December 12, 2011, due to scoliosis and osteoarthritis in her
5 neck. (Administrative Record (“AR”) 42, 90, 100, 184, 185.) Plaintiff was born on September
6 22, 1980, and was 32 years old on the date the application was filed. (AR 45, 55, 90, 100.) She
7 graduated from high school and completed four years of college. (AR 45, 58.) From July 2010
8 to December 2011, Plaintiff worked at Subway making sandwiches. (AR 44, 60–61, 208–09,
9 244.) Prior to that, Plaintiff worked at a music equipment store. (AR 60–61, 208, 210, 244.)

10 **A. Relevant Medical Evidence³**

11 **1. Family Healthcare Network**

12 In May 2009, Plaintiff was evaluated for neck pain and headaches. (AR 304–05, 323–24.)
13 Plaintiff stated she had “some scoliosis diagnosed in childhood or at least spinal curvature.” (AR
14 304.) She reported a history of neck and head pain in the past and stated that “when she stretches
15 and twists the neck, it tends to feel good as it pops.” (AR 304, 323.) Plaintiff did yoga, which
16 tended to “feel beneficial.” (AR 304, 323.) On examination by John Reifenberg, N.D./D.C.,
17 Plaintiff’s range of motion in her back and neck were normal, with mild discomfort in her neck.
18 (AR 304, 323.) Dr. Reifenberg observed a “slight to mild curvature” especially at the thoracic
19 spine, and a slight curvature at the cervical and lumbar spine areas. (AR 304, 323.) Dr.
20 Reifenberg found no mass, crepitus, instability, or deformity palpable throughout the spine. (AR
21 304, 323.) He concluded that Plaintiff had a history of recurrent neck and pain and “[p]robable
22 tension headache with some aggravation of pain more recently.” (AR 305, 324.) Dr. Reifenberg
23 recommended mild stretching, and ice and heat as needed. (AR 305, 324.)

24 On August 20, 2012, Plaintiff presented for a follow up appointment related to her
25 scoliosis, with which she was diagnosed as a child but never had an evaluation. (AR 318, 325–
26 27.) She reported having “mild pain” in her upper back, “especially after long days of work.”

27 ² The parties consented to the jurisdiction of a U.S. Magistrate Judge. (Docs. 7, 8.)

28 ³ As Plaintiff’s assertion of error is limited to the ALJ’s consideration of Plaintiff’s subjective complains of pain, only evidence relevant to these arguments is set forth below.

1 (AR 318, 325.) Kari Vanocker, P.A., observed a mild thoracic curvature to the left, and assessed
2 Plaintiff with scoliosis. (AR 326.) Dr. Vanocker ordered x-rays and advised Plaintiff to exercise
3 and to apply ice and heat for pain. (AR 327.)

4 Plaintiff had an x-ray of her spine on September 14, 2012, which showed lower thoracic
5 levoscoliosis of 11 degrees and compensatory lumbar dextroscoliosis at 10 degrees. (AR 312–17,
6 438.) At her follow up appointment on October 13, 2012, Plaintiff continued to complain of
7 chronic thoracic and lower back pain, with intermittent muscle tightness, spasms, and pain. (AR
8 306, 328.) She reported controlling her pain with home exercise and over-the-counter
9 medications. (AR 306–07, 328–29.) Marilyn Perez, P.A-C., recommended a “trial of physical
10 therapy.” (AR 307, 329.) Plaintiff was prescribed ibuprofen for back pain on October 16, 2012.
11 (AR 330–32.)

12 A December 14, 2012, x-ray of Plaintiff’s cervical spine showed disc disease at the C5–
13 C6 and C6–C7 levels. (AR 336.) A subsequent x-ray of Plaintiff’s cervical spine performed on
14 April 17, 2013, showed degenerative disc disease at C5–C6, with mild to moderate bilateral
15 neural foraminal stenosis that is greater on the left side. (AR 386.)

16 In September 2013, Plaintiff complained that ibuprofen was not helping and she
17 “want[ed] something stronger.” (AR 409.) She was prescribed Meloxicam and Tramadol. (AR
18 410.) On June 24, 2014, Plaintiff presented for a follow-up appointment related to scoliosis,
19 osteoarthritis, and chronic pain syndrome. (AR 458.) She indicated that she “hasn’t worked
20 since 2011, but wants to apply for disability.” (AR 458.) On examination, Plaintiff had full
21 range of motion in her back with no tenderness. (AR 458.) Plaintiff’s prescriptions for
22 Meloxicam and Tramadol were refilled. (AR 458.) She reported in October 2014 that the pain
23 medication “worked well.” (AR 452.) Plaintiff’s bone densitometry test performed December 3,
24 2014, was normal.

25 **2. Sierra View District–Outpatient Physical Therapy Services**

26 Plaintiff attended three physical therapy sessions on April 17, 18, and 23, 2013. (AR
27 346–51, 380–85.) At the April 18, 2013, session, Plaintiff reported that her back felt “okay” and
28 that she did not take her pain medication the prior evening. (AR 350, 384.) Plaintiff continued

1 physical therapy until June 2013. (AR 492–505.) On June 28, 2013, the physical therapist noted
2 that after 12 visits, Plaintiff had “improved in bilateral scapular stability allowing her to improve
3 with posture and perform regular [activities of daily living] with less difficulty.” (AR 416, 507.)
4 Plaintiff “denie[d] pain” and reported being able to lift her daughter, light objects, and to
5 “perform normal [activities of daily living] with less difficulty.” (AR 416, 507.)

6 **3. Consultative Examiner Roger Wagner, M.D.**

7 On July 14, 2013, internist Dr. Wagner reviewed Plaintiff’s x-ray results and conducted
8 an internal medicine evaluation. (AR 401–404.) Plaintiff complained of thoracolumbar back
9 pain and scoliosis. (AR 401.) She reported that physical therapy has “helped significantly.” (AR
10 401.)

11 Plaintiff reported she can walk four to six blocks and sit for about 60 minutes. (AR 401.)
12 She cooks, cleans, drives, shops, and performs her own activities of daily living without
13 assistance. (AR 401.) Plaintiff reported participating in physical therapy and using an exercise
14 bike “almost daily.” (AR 401.)

15 Dr. Wagner observed Plaintiff “easily” get up and out of the chair from the waiting room
16 and walk at a “brisk” pace back to the exam room without assistance. (AR 402.) Plaintiff sat
17 “comfortably” and was “very easily able to get on and off the exam table.” (AR 402.) She was
18 “very easily” able to bend over at the waist and take shoes and socks off and put them back on,
19 “demonstrating good dexterity and good flexibility.” (AR 402.) Dr. Wagner observed that
20 Plaintiff was able to walk on her toes and heels and had a normal station and gait. (AR 403.)
21 Plaintiff’s Romberg and straight leg raising tests were negative. (AR 403.) She had normal “5/5”
22 grip strength and “5/5” motor strength, in both the upper and lower extremities bilaterally. (AR
23 404.) Dr. Wagner diagnosed Plaintiff with back pain, noting that while Plaintiff complains of
24 back pain and has x-rays that show “some scoliosis,” she has “good sitting tolerance and is
25 flexible today.” (AR 404.) He commented that “[i]t is difficult to see any significant scoliosis on
26 today’s exam.” (AR 404.)

1 Dr. Wagner assessed Plaintiff's physical residual functional capacity ("RFC")⁴ and opined
2 that Plaintiff was limited to (1) standing or walking up to six hours; (2) lifting and carrying 25
3 pounds frequently and 50 pounds occasionally; and (3) stooping or crouching no more than
4 frequently. (AR 404.) Dr. Wagner found no limitations on sitting, manipulative activities, or
5 environmental activities. (AR 404)

6 **4. State Agency Physicians**

7 On July 30, 2013, Joan L. Bradus, M.D., a Disability Determinations Service medical
8 consultant, assessed Plaintiff's RFC and found that, taking into account her "mild scoliosis,"
9 Plaintiff had no exertional or non-exertional limitations. (AR 96.) Dr. Bradus discounted Dr.
10 Wagner's opinion, finding that it relied "heavily on the subjective report of symptoms and
11 limitations provided by the individual, and the totality of the evidence does not support the
12 opinion." (AR 97.) Upon reconsideration on November 21, 2013, another Disability
13 Determinations Service medical consultant, Norman J. Rubaum, M.D., affirmed Dr. Bradus' RFC
14 findings. (AR 106.)

15 **B. Plaintiff's Statement**

16 On April 26, 2013, Plaintiff completed an "Exertion Questionnaire." (AR 222-24.)
17 Plaintiff stated that she lives in a mobile home with family. (AR 222.) She described her
18 disabling symptoms as "too much pain throughout the day" that is "unexpected" and "can effect
19 [sic] a 5 hr/day wkday." (AR 222.) When asked what kinds of things she does on an average day
20 and how those activities make her feel, Plaintiff responded that she has to "take everything slow
21 and very well managed." (AR 222.) She stated that she has more pain with certain activities and
22 that it "depends on the act." (AR 222.) She can walk "only so far before it becomes
23 uncomfortable and painful." (AR 222.) Plaintiff reported that she climbs stairs, lifts things, and
24 can carry things but has to take medication for the pain. (AR 223.) She shops for groceries,

25 _____
26 ⁴ RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a
27 work setting on a regular and continuing basis of 8 hours a day, for 5 days a week, or an equivalent work schedule.
28 Social Security Ruling 96-8p. The RFC assessment considers only functional limitations and restrictions that result
from an individual's medically determinable impairment or combination of impairments. *Id.* "In determining a
claimant's RFC, an ALJ must consider all relevant evidence in the record including, inter alia, medical records, lay
evidence, and 'the effects of symptoms, including pain, that are reasonably attributed to a medically determinable
impairment.'" *Robbins v. Social Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006).

1 cleans her home, drives a car, gardens, but does not work on cars. (AR 223.) Plaintiff reported
2 that she has difficulty finishing housework and chores due to “pain,” “uncomfortableness” and
3 “time management.” (AR 224.) Plaintiff sleeps for 10 hours a day and takes no naps. (AR 224.)
4 She reported taking ibuprofen and using a brace to support her back. (AR 224.)

5 **C. Administrative Proceedings**

6 The Commissioner denied Plaintiff’s applications for benefits initially on August 1,
7 2013, and again on reconsideration on November 21, 2013. (AR 114–19, 121–24.)
8 Consequently, Plaintiff requested a hearing before an Administrative Law Judge (“ALJ”). (AR
9 126–32.) At the hearing on March 18, 2015, Plaintiff appeared with counsel and testified before
10 an ALJ as to her alleged disabling conditions. (AR 55–78.)

11 **1. Plaintiff’s Testimony**

12 Plaintiff testified that she cannot work because she is “usually in too much pain and the
13 jobs just bring more pain” and she doesn’t want her six-year-old daughter to see her “in that
14 much pain.” (AR 63.) She stated her pain is in her neck when she stands or sits for long
15 periods of time. (AR 63.) The pain in her neck is “just uncomfortable” and feels like she’s
16 “choking all the time.” (AR 64, 73–74.) She also has pain in her low back whenever she does
17 “anything for a long period of time.” (AR 63.) Plaintiff testified that she is in pain “all the
18 time” but it is “more intense and severe sometimes.” (AR 64.) She stated that activities such as
19 “talking, walking, standing, sitting” for a “long time” make the pain worse. (AR 64–65.)
20 Plaintiff testified that when she “really concentrate[s]” it gets her “mind off of the pain.” (AR
21 65.) She stated that the pain is also in her ankles, hips, and joints. (AR 73.)

22 Plaintiff stated she takes Tramadol, a muscle relaxer, and Meloxicam, for pain. (AR
23 65.) She testified that the medication “makes a difference because it’s medication” but her pain
24 remains at a “ten” on a scale of one to ten. (AR 67.) Plaintiff attended physical therapy, but
25 testified that she did not get any positive results from her sessions. (AR 74–75.) She has not
26 been recommended for surgery or steroid injections. (AR 77.)

27 Plaintiff testified she has a valid driver’s license and drives her car every day to take her
28 daughter to her school bus stop. (AR 58.) She also drives to go shopping at the grocery store

1 and Wal-Mart, and sometimes drives her daughter to the library. (AR 58.) Plaintiff testified
2 that the most that she can lift and carry is the weight of her purse; however she later stated she
3 could lift her daughter, who weighs more than 40 pounds. (AR 68, 71.) According to Plaintiff,
4 she cannot walk far without getting out of breath, as she is “out of breath with everything, even
5 talking or thinking, sitting, [and] concentrating.” (AR 69.) She testified that she cannot stand
6 long, her lower back, ankles, hips, and knees ache while sitting, and she lies down “every day.”
7 (AR 69, 76.) She can walk a block but “choose[s] not to.” (AR 76.) She can “sometimes” sit
8 through a two-hour movie but often has to stand up “less than halfway” through it. (AR 77–78.)

9 Plaintiff lives in a mobile home with her partner, their daughter, and four dogs. (AR
10 56.) She completed four years of college but did not obtain a degree. (AR 58.) Plaintiff
11 testified that she last worked in December 2011, when she “voluntarily quit” her job to move in
12 with her daughter’s father. (AR 59.) Since 2013, she has applied for full time retail sales and
13 cashier jobs at Target, Wal-Mart, McDonald’s, and other local businesses. (AR 62–63, 72.)
14 Plaintiff testified that if she had been offered one of those jobs she would have accepted it,
15 “[d]epending on what they wanted me to do,” because she “would probably be making more
16 money” than she was receiving in welfare. (AR 63.) According to Plaintiff, she’d “force”
17 herself to work, but she believes she is not being hired because the employers “already know”
18 she is disabled or in pain. (AR 72.)

19 2. Vocational Expert’s Testimony

20 A Vocational Expert (“VE”) testified at the hearing that Plaintiff had the following past
21 work as a sandwich maker, Dictionary of Operational Titles (DOT) code 317.664-010, which
22 was unskilled with a specific vocational preparation (SVP)⁵ of 2, and light work as she
23 performed it; and as a receptionist, DOT 237.367-034, semi-skilled, SVP 4, and light as
24 performed. (AR 81–83.) The ALJ asked the VE to consider a person of Plaintiff’s age,
25 education, and past work history. (AR 84.) The VE was also to assume this person is limited to

26 ⁵ Specific vocational preparation, as defined in DOT, App. C, is the amount of lapsed time required by a typical
27 worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a
28 specific job-worker situation. DOT, Appendix C – Components of the Definition Trailer, 1991 WL 688702 (1991).
Jobs in the DOT are assigned SVP levels ranging from 1 (the lowest level – “short demonstration only”) to 9 (the
highest level – over 10 years of preparation). *Id.*

1 lifting and carrying up to 50 pounds occasionally and 25 pounds frequently, and can frequently
2 stoop and crouch. (AR 84.) The VE testified that such a person could perform Plaintiff's past
3 work. (AR 84.) The VE further testified that such a person could perform other jobs in the
4 economy at the medium level, such as a kitchen helper, DOT 318.687-010, unskilled, SVP 2; an
5 industrial cleaner, DOT 381.687-010, unskilled, SVP 2; and a cook's helper, DOT code
6 317.687-010, unskilled, SVP 2. (AR 84–85.)

7 The ALJ posed a second hypothetical regarding the first hypothetical person but with the
8 additional restriction in that they can lift and carry up to 20 pounds occasionally and 10 pounds
9 frequently. (AR 85.) The VE testified that such a person could perform Plaintiff's past work as
10 performed (but not the sandwich worker per the DOT), and could also perform other jobs in the
11 economy, such as an usher, DOT 344.677-014, light, unskilled, SVP 2; a ticket taker, DOT
12 344.677-010, light, unskilled, SVP 2; and a cashier, DOT code 344.677-010, light, unskilled,
13 SVP 2. (AR 85.) The ALJ asked the VE to consider the same hypothetical but with the
14 following additional restrictions: can lift and carry up to 10 pounds occasionally; can stand and
15 walk about two hours; no constant repetitive rotation, flexion, or extension of the neck; and
16 must be allowed to take additional unscheduled breaks at will for 15 minutes. (AR 85–86.) The
17 VE testified that there would be no work such person could perform. (AR 86.)

18 Plaintiff's attorney asked the VE to consider a person of Plaintiff's age, education, and
19 past work history, and to assume this person was limited to lifting no more than 10 pounds;
20 occasional postural activities; standing and walking no more than a total of four hours per day;
21 and sitting more than four hours a day with the ability to change positions every 30 minutes.
22 (AR 86–87.) The VE testified that such a person could perform sedentary jobs such as
23 assembly, DOT 734.687-018, unskilled, SVP 2; and ampoule sealer, DOT 559.687.014,
24 unskilled, SVP 2. (AR 87.) Plaintiff's counsel then asked the VE to consider that same
25 hypothetical person as just presented but to include the additional limitation that the person
26 needs to lie down at unpredictable intervals, on average of an extra 15 minutes per day. (AR
27 88.) The VE testified that no jobs were available for that person. (AR 88.) Plaintiff's counsel's
28 final question of the VE was to consider a hypothetical person who was able to lift no more than

1 10 pounds, able to sit no more than four hours a day, and able to stand and walk no more than
2 two hours a day. The VE testified that no jobs were available for that person. (AR 88.)

3 **D. The ALJ's Decision**

4 In a decision dated May 18, 2015, the ALJ found that Plaintiff was not disabled. (AR
5 39–46.) The ALJ conducted the five-step disability analysis set forth in 20 C.F.R. § 416.920.
6 (AR 41–46.) The ALJ decided that Plaintiff had not engaged in substantial gainful activity
7 since January 29, 2013, the application date. (AR 41.) The ALJ found that Plaintiff had the
8 severe impairments of (1) disc disease at C5–C6 and C6–C7; (2) osteoarthritis; and (3) chronic
9 pain syndrome. (AR 41.) However, Plaintiff did not have an impairment or combination of
10 impairments that met or medically equaled one of the listed impairments in 20 C.F.R. Part 404,
11 Subpart P, Appendix 1 (“the Listings”). (AR 41–42.) The ALJ determined that Plaintiff had
12 the RFC

13 to perform less than the full range of medium work as defined in 29 CFR
14 [§] 416.967(c) except [Plaintiff] can lift and carry 50 pounds occasionally
and 25 pounds frequently and frequently stoop and crouch.

15 (AR 42.)

16 Given her RFC, the ALJ determined that Plaintiff was not disabled because she was able
17 to perform her past relevant work as a receptionist and a sandwich maker. (AR 44.) The ALJ
18 also made the alternative finding that Plaintiff could perform a significant number of other jobs in
19 the local and national economies, specifically kitchen helper, industrial cleaner, and cook’s
20 helper. (AR 45.) In reaching her conclusions, the ALJ also determined that Plaintiff’s subjective
21 complaints were not entirely credible. (AR 43–44.)

22 Plaintiff sought review of this decision before the Appeals Council, which denied review
23 on August 2, 2016. (AR 28–31.) Therefore, the ALJ’s decision became the final decision of the
24 Commissioner. 20 C.F.R. § 416.1481.

25 **III. SCOPE OF REVIEW**

26 The ALJ’s decision denying benefits “will be disturbed only if that decision is not
27 supported by substantial evidence or it is based upon legal error.” *Tidwell v. Apfel*, 161 F.3d 599,
28 601 (9th Cir. 1999). In reviewing the Commissioner’s decision, the Court may not substitute its

1 judgment for that of the Commissioner. *Macri v. Chater*, 93 F.3d 540, 543 (9th Cir. 1996).
2 Instead, the Court must determine whether the Commissioner applied the proper legal standards
3 and whether substantial evidence exists in the record to support the Commissioner’s findings.
4 *See Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007). “Substantial evidence is more than a
5 mere scintilla but less than a preponderance.” *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198
6 (9th Cir. 2008). “Substantial evidence” means “such relevant evidence as a reasonable mind
7 might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401
8 (1971) (quoting *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)). The Court
9 “must consider the entire record as a whole, weighing both the evidence that supports and the
10 evidence that detracts from the Commissioner’s conclusion, and may not affirm simply by
11 isolating a specific quantum of supporting evidence.” *Lingenfelter v. Astrue*, 504 F.3d 1028,
12 1035 (9th Cir. 2007) (citation and internal quotation marks omitted).

13 **IV. APPLICABLE LAW**

14 Social security claimants have the initial burden of proving disability. *Bowen v. Yuckert*,
15 482 U.S. 137, 146 n.5. An individual is considered disabled for purposes of disability benefits if
16 he or she is unable to engage in any substantial, gainful activity by reason of any medically
17 determinable physical or mental impairment that can be expected to result in death or that has
18 lasted, or can be expected to last, for a continuous period of not less than twelve months. 42
19 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A); *see also Barnhart v. Thomas*, 540 U.S. 20, 23 (2003).
20 The impairment or impairments must result from anatomical, physiological, or psychological
21 abnormalities that are demonstrable by medically accepted clinical and laboratory diagnostic
22 techniques and must be of such severity that the claimant is not only unable to do his previous
23 work, but cannot, considering his age, education, and work experience, engage in any other kind
24 of substantial, gainful work that exists in the national economy. 42 U.S.C. §§ 423(d)(2)–(3),
25 1382c(a)(3)(B), (D).

26 The regulations provide that the ALJ must undertake a specific five-step sequential
27 analysis in the process of evaluating a disability. In the First Step, the ALJ must determine
28 whether the claimant is currently engaged in substantial gainful activity. 20 C.F.R. § 416.920(b).

1 If not, in the Second Step, the ALJ must determine whether the claimant has a severe impairment
2 or a combination of impairments significantly limiting him from performing basic work
3 activities. *Id.* § 416.920(c). If so, in the Third Step, the ALJ must determine whether the
4 claimant has a severe impairment or combination of impairments that meets or equals the
5 requirements of the Listing of Impairments (“Listing”), 20 C.F.R. 404, Subpart P, App. 1. *Id.* §
6 416.920(d). If not, in the Fourth Step, the ALJ must determine whether the claimant has
7 sufficient residual functional capacity despite the impairment or various limitations to perform his
8 past work. *Id.* § 416.920(f). If not, in Step Five, the burden shifts to the Commissioner to show
9 that the claimant can perform other work that exists in significant numbers in the national
10 economy. *Id.* § 416.920(g). If a claimant is found to be disabled or not disabled at any step in
11 the sequence, there is no need to consider subsequent steps. *Tackett v. Apfel*, 180 F.3d 1094,
12 1098–99 (9th Cir. 1999); 20 C.F.R. § 416.920.

13 V. DISCUSSION

14 Plaintiff contends that the ALJ failed to articulate clear and convincing reasons for
15 discounting her testimony regarding her subjective complaints. (Doc. 14 at 6–11.) The
16 Commissioner responds that the ALJ properly relied on evidence in the record that undermined
17 the credibility of Plaintiff’s allegations of disabling symptoms and limitations. (Doc. 15 at 6–15.)

18 A. Legal Standard

19 In evaluating the credibility of a claimant’s testimony regarding subjective pain, an ALJ
20 must engage in a two-step analysis. *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).
21 First, the ALJ must determine whether the claimant has presented objective medical evidence of
22 an underlying impairment that could reasonably be expected to produce the pain or other
23 symptoms alleged. *Id.* The claimant is not required to show that his impairment “could
24 reasonably be expected to cause the severity of the symptom [he] has alleged; [he] need only
25 show that it could reasonably have caused some degree of the symptom.” *Id.* (quoting
26 *Lingenfelter*, 504 F.3d at 1036). If the claimant meets the first test and there is no evidence of
27 malingering, the ALJ can only reject the claimant’s testimony about the severity of the
28 symptoms if he gives “specific, clear and convincing reasons” for the rejection. *Id.* As the

1 Ninth Circuit has explained:

2 The ALJ may consider many factors in weighing a claimant’s credibility,
3 including (1) ordinary techniques of credibility evaluation, such as the claimant’s
4 reputation for lying, prior inconsistent statements concerning the symptoms, and
5 other testimony by the claimant that appears less than candid; (2) unexplained or
6 inadequately explained failure to seek treatment or to follow a prescribed course
of treatment; and (3) the claimant’s daily activities. If the ALJ’s finding is
supported by substantial evidence, the court may not engage in second-guessing.

7 *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008) (citations and internal quotation
8 marks omitted); *see also Bray*, 554 F.3d at 1226–27; 20 C.F.R. § 404.1529. Other factors the
9 ALJ may consider include a claimant’s work record and testimony from physicians and third
10 parties concerning the nature, severity, and effect of the symptoms of which he complains.
11 *Light v. Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997).

12 The clear and convincing standard is “not an easy requirement to meet,” as it is “the
13 most demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015
14 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir.
15 2002)). General findings are not sufficient to satisfy this standard; the ALJ ““must identify what
16 testimony is not credible and what evidence undermines the claimant’s complaints.”” *Burrell v.*
17 *Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014) (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th
18 Cir. 1995)).

19 **B. The ALJ Properly Found Plaintiff Less Than Fully Credible.**

20 Here, the ALJ found Plaintiff’s credibility was undermined by Plaintiff’s treatment
21 history, work history, the functional abilities Plaintiff demonstrated in daily activities that were
22 in excess of her allegations of disability, and the objective medical evidence. (AR 43–44.) The
23 Court takes each finding in turn.

24 **1. Conservative Treatment**

25 The ALJ’s credibility assessment properly relied on evidence showing improvement in
26 Plaintiff’s symptoms with “conservative treatment.” (AR 43.) Plaintiff attended 12 physical
27 therapy sessions between April and June 2013, which Plaintiff reported “helped significantly.”
28 (AR 43, 346–51, 380–85, 401, 492–505.) As the ALJ noted, at the conclusion of the sessions in

1 June 2013, Plaintiff denied having pain and reported being able to lift her daughter, light objects,
2 and being able to “perform normal activities of daily living] with less difficulty.” (AR 43, 416,
3 507.) The ALJ further observed Plaintiff’s physical therapist’s note that, as a result of these
4 physical therapy sessions, Plaintiff had “improved in bilateral scapular stability allowing her to
5 improve with posture and perform regular [activities of daily living] with less difficulty.” (AR
6 43, 416, 507.) In July 2013, internist and examiner Dr. Wagner found that Plaintiff demonstrated
7 “good dexterity and good flexibility” and had “good sitting tolerance” at her exam. (AR 43, 402,
8 404.) In 2012, Plaintiff reported controlling her pain with home exercise and over-the-counter
9 medications. (AR 306–07, 328–29.) She also reported using a brace to support her back. (AR
10 224.)

11 In addition to physical therapy, Plaintiff’s treating physicians recommended mild
12 stretching, ice, heat, and exercise to address the pain. (AR 305, 324, 327.) As the ALJ noted,
13 Plaintiff did not receive any biofeedback treatment, acupuncture, use of a TENS unit, and did not
14 visit a pain management clinic. (AR 43.) Plaintiff testified she has not been recommended for
15 surgery or steroid injections. (AR 77.) Based on the above conservative treatment and Plaintiff’s
16 positive response thereto, the ALJ was entitled to discount Plaintiff’s credibility. *See*
17 *Tommasetti*, 533 F.3d at 1040 (holding that the ALJ properly considered the plaintiff’s use of
18 “conservative treatment including physical therapy and the use of anti-inflammatory medication,
19 a transcutaneous electrical nerve stimulation unit, and a lumbosacral corset”); *Parra v. Astrue*,
20 481 F.3d 742, 750–51 (9th Cir. 2007) (evidence of conservative treatment is sufficient to discount
21 a claimant’s testimony regarding severity of an impairment); *Morgan v. Comm’r of Social Sec.*
22 *Admin.*, 169 F.3d 595, 599 (9th Cir. 1999) (ALJ’s adverse credibility determination properly
23 accounted for physician’s report of improvement with use of medication); *Johnson v. Shalala*, 60
24 F.3d 1428, 1434 (9th Cir. 1995) (ALJ may properly rely on the fact that only conservative
25 treatment has been prescribed); *Odle v. Heckler*, 707 F.2d 439, 440 (9th Cir. 1983) (ALJ may
26 consider whether treatment produced fair response or control of pain that was satisfactory).

27 The record also shows that Plaintiff was prescribed Tramadol and Meloxicam for pain
28

1 (AR 65, 223, 410, 458), which “worked well” (AR 452).⁶ Plaintiff was also prescribed
2 ibuprofen. (AR 224, 330.) Plaintiff contends that her receipt of prescription pain medication
3 demonstrates that she did not undergo “conservative” treatment for her pain. (Doc. 14 at 9–10.)
4 Several courts in this circuit, however, have found that the fact that Plaintiff has been prescribed
5 narcotic medication does not negate the reasonableness of the ALJ’s finding that Plaintiff’s
6 treatment *as a whole* was conservative, particularly when undertaken in addition to other, less
7 invasive treatment methods. *See Traynor v. Colvin*, No. 1:13–cv–1041–BAM, 2014 WL
8 4792593, at *9 (E.D. Cal. Sept. 24, 2014) (finding evidence that Plaintiff’s symptoms were
9 managed through “prescription medications and infrequent epidural and cortisone injections” was
10 “conservative treatment” was sufficient for the ALJ to discount the plaintiff’s testimony
11 regarding the severity of impairment.); *Morris v. Colvin*, No. 13–6236, 2014 WL 2547599, at *4
12 (C.D. Cal. June 3, 2014) (ALJ properly discounted credibility when plaintiff received
13 conservative treatment consisting of physical therapy, use of TENS unit, chiropractic treatment,
14 Vicodin, and Tylenol with Vicodin); *Jones v. Comm’r of Soc. Sec.*, No. 2:12–cv–01714–KJN,
15 2014 WL 228590, at *7–10 (E.D. Cal. Jan. 21, 2014) (ALJ properly found that plaintiff’s
16 conservative treatment, which included physical therapy, anti-inflammatory and narcotic
17 medications, use of a TENS unit, occasional epidural steroid injections, and massage therapy,
18 diminished plaintiff’s credibility); *Higinio v. Colvin*, No. EDCV 12–1820 AJW, 2014 WL 47935,
19 at *5 (C.D. Cal. Jan. 7, 2014) (holding that despite the fact that the claimant had been prescribed
20 narcotic pain medication at various times, the claimant’s overall treatment—which also included
21 use of a back brace and a heating pad—was conservative); *Johnson v. Colvin*, No. 1:12–CV–
22 524–AWI–GSA, 2013 WL 2643305, at * 13 (E.D. Cal. June 12, 2013) (“Plaintiff’s spinal pain
23 was treated with medication and not injections or surgery” and this “[c]onservative course of
24 treatment is a proper basis to reject Plaintiff’s subjective complaints.”); *Walter v. Astrue*, No.
25 EDCV 09–1569 AGR, 2011 WL 1326529, at *3 (C.D. Cal. Apr. 6, 2011) (ALJ permissibly
26 discredited claimant’s allegations based on conservative treatment consisting of Vicodin, physical
27

28 ⁶ Impairments that can be controlled effectively with medication are not considered disabling. *Warre v. Comm’r of the SSA*, 439 F.3d 1001, 1006 (9th Cir. 2006).

1 therapy, and an injection). Accordingly, the ALJ’s adverse credibility determination based on
2 Plaintiff’s conservative treatment will not be disturbed.

3 **2. Work History**

4 The ALJ properly found that Plaintiff’s credibility was weakened by her own testimony
5 that she stopped working for reasons unrelated to any alleged impairment and continued to
6 apply for jobs after her disability application date. (AR 44.) Plaintiff testified that she last
7 worked in December 2011, when she “voluntarily quit” her job to move in with her daughter’s
8 father. (AR 59. *See also* AR 256.) Plaintiff testified further that she has continued to apply for
9 full-time work since 2013, and that she would have accepted a job, if offered. (AR 62–63, 72.)
10 Taken together, the Court finds this evidence constitutes a clear and convincing reason to
11 discount Plaintiff’s credibility, and is highly probative as to the veracity of her statements that
12 she is unable to work due to her physical limitations. *See Bruton v. Massanari*, 268 F.3d 824,
13 828 (9th Cir. 2001) (ALJ did not err in considering the claimant’s work history and his
14 admission that he left his job for reasons other than his alleged impairment); *Macri v. Chater*,
15 93 F.3d 540, 544 (9th Cir. 1996) (plaintiff’s search for work during the alleged period of
16 disability is relevant credibility evidence); *Drouin v. Sullivan*, 966 F.2d 1255, 1259 (9th Cir.
17 1992) (ALJ did not err in considering that, “according to [the claimant’s] own testimony, she
18 did not lose her past two jobs because of pain”); *Clouse v. Comm’r of Soc. Sec. Admin.*, No.
19 6:16-cv-00084-HZ, 2017 WL 701386, at *7 (D. Or. Feb. 20, 2017) (“[T]he ALJ reasonably
20 discounted Plaintiff’s credibility due to the incongruence between the fact that she continued to
21 apply for jobs after ending her employment with Harry & David and her testimony that she
22 would not have accepted any such jobs if they had been offered.”).⁷

23
24 ⁷ Even if the evidence relevant to Plaintiff’s work history was not substantial enough to be a clear and convincing
25 reason to reject Plaintiff’s subjective testimony, remand is not required, however, because the remainder of the ALJ’s
26 credibility findings were supported by ample evidence in the record, *infra*. *See Carmickle v. Comm’r, Soc. Sec.*
27 *Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008) (citing *Batson v. Comm. of Soc. Sec. Admin.*, 359 F. 3d 1190, 1197 (9th
28 Cir. 2004)) (“So long as there remains ‘substantial evidence supporting the ALJ’s conclusions on . . . credibility’ and
the error ‘does not negate the validity of the ALJ’s ultimate [credibility] conclusion’ such is deemed harmless and
does not warrant reversal.”); *Tonapetyan v. Halter*, 242 F. 3d 1144, 1148 (9th Cir. 2001) (that some reasons for
discrediting claimant’s testimony should be properly discounted does not render an ALJ’s determination invalid so
long as that determination is supported by other, substantial evidence). This Court may not “second-guess” the
ALJ’s credibility finding simply because the evidence may have been susceptible of other interpretations more
favorable to Plaintiff. *See Tommasetti*, 533 F.3d at 1039.

3. Activities of Daily Living

1
2 The ALJ appropriately considered Plaintiff's activities of daily living in determining that
3 she was not entirely credible. When a claimant spends a substantial part of the day "engaged in
4 pursuits involving the performance of physical functions that are transferrable to a work setting,
5 a specific finding as to this fact may be sufficient to discredit a claimant's allegations."
6 *Morgan*, 169 F.3d at 600 (quoting *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)); *see also*
7 *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) ("While a claimant need not vegetate in a
8 dark room in order to be eligible for benefits, the ALJ may discredit a claimant's testimony
9 when the claimant reports participation in everyday activities indicating capacities that are
10 transferable to a work setting.") (internal quotation and citations omitted). "Even where those
11 activities suggest some difficulty functioning, they may be grounds for discrediting the
12 claimant's testimony to the extent that they contradict claims of a totally debilitating
13 impairment." *Id.* (citations omitted).

14 Plaintiff alleges that she cannot work because she is in pain "all the time" and activities
15 such as "talking, walking, standing, sitting" make the pain worse. (AR 64–65.) She asserts she
16 cannot walk far without getting out of breath, as she is "out of breath with everything, even
17 talking or thinking, sitting, [and] concentrating." (AR 69, 76.) Plaintiff further claims that she
18 cannot stand long, that her lower back, ankles, hips, and knees ache while sitting, and that she
19 lies down "every day." (AR 69, 76.) The ALJ found, however, that "the evidence demonstrates
20 that [Plaintiff] maintains a fairly active lifestyle consistent with, if not exceeding the [RFC]
21 described herein." (AR 44.) As the ALJ noted, Plaintiff testified that she could sit through a
22 two-hour movie, yet also claimed that her back pain was aggravated by sitting too long. (AR
23 42, 77–78.) The ALJ pointed out that in July 2013, Plaintiff reported riding an exercise bike
24 "almost daily." (AR 401.) The ALJ found that Plaintiff, based on her own testimony, was able
25 to shop, garden, cook, and clean her home (which she shares with her partner, six-year old
26 daughter, and four dogs) without assistance. (AR 44, 58, 223, 401.) Plaintiff also testified at
27 the hearing that she drives her daughter to and from the school bus stop every day and to the
28 library occasionally. (AR 58.)

1 This Court’s recent order in *Martin v. Colvin*, 2017 WL 615196, at *11 (E.D. Cal. Feb.
2 14, 2017) is instructive. In that case, the claimant was able to run errands using public
3 transportation, read, crochet, watch television, and perform such household chores as cooking,
4 laundry, vacuuming, cleaning the bathtub and shower bench. *Id.* The Court found that such
5 “activities tended to suggest that the claimant may have still been capable of performing the
6 basic demands of unskilled work on a sustained basis.” *Id.* Here, Plaintiff engaged in largely
7 the same types of daily activities, in fact to a greater extent, as the claimant in *Martin*. As such,
8 the Court similarly finds that such activities tend to suggest that Plaintiff may still be able to
9 perform, on a sustained basis, the basic demands of her past work of sales director (manager)
10 and restaurant manager as generally performed. *See Fair*, 885 F.2d at 603 (finding that if a
11 claimant has the ability to perform activities “that involved many of the same physical tasks as a
12 particular type of job, it would not be farfetched for an ALJ to conclude that the claimant’s pain
13 does not prevent her from working”); *see also, e.g., Stubbs-Danielson v. Astrue*, 539 F.3d 1169,
14 1175 (9th Cir. 2008) (finding that the ALJ sufficiently explained his reasons for discrediting the
15 claimant’s testimony because the record reflected that the claimant performed normal activities
16 of daily living, including cooking, housecleaning, doing laundry, and helping her husband
17 managing finances); *Morgan*, 169 F.3d at 600 (ALJ’s determination regarding claimant’s ability
18 to “fix meals, do laundry, work in the yard, and occasionally care for his friend’s child” was a
19 specific finding sufficient to discredit the claimant’s credibility); *Kelly v. Astrue*, 471 F. App’x
20 674, 677 (9th Cir. 2012) (holding that ALJ properly made an adverse credibility finding
21 because, in part, claimant’s daily activities included driving, washing the dishes, shopping, and
22 caring for her two children); *Nelson v. Colvin*, No. 1:15-cv-00696-SKO, 2016 WL 3407627, at
23 *20 (E.D. Cal. June 20, 2016) (ALJ properly discredited subjective complaints of claimant who
24 suffered from chronic back problems where claimant engaged in activities such as preparing
25 simple meals, washing dishes, driving a car, shopping for groceries and household supplies 2–3
26 times a week, walking up to a mile, using a computer for about half an hour at a time, visiting
27 with family, mopping and vacuuming, independently handling her own finances, and doing
28 yoga tapes at home.).

1 To be sure, the record also contains some contrary evidence, such as Plaintiff's
2 statements regarding her chronic pain, including in her joints and a "choking" sensation in her
3 neck, and her inability to walk, sit, or stand for long periods. (AR 63–65, 69, 73–74, 222.)
4 However, it is the function of the ALJ to resolve any ambiguities, and the Court finds the ALJ's
5 assessment of Plaintiff's daily activities to be reasonable and supported by substantial evidence.
6 *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (affirming ALJ's credibility
7 determination even where the claimant's testimony was somewhat equivocal about how
8 regularly she was able to keep up with all of the activities and noting that the ALJ's
9 interpretation "may not be the only reasonable one").

10 **4. Objective Medical Evidence**

11 Finally, the ALJ noted that "the objective medical evidence does not support the alleged
12 severity of symptoms." (AR 44.) Though the Commissioner asserts the ALJ properly
13 discredited Plaintiff on this basis, the Court is not convinced that the ALJ was sufficiently
14 specific in the articulation of this reason to permissibly discredit Plaintiff's testimony. For
15 example, the ALJ failed to specify what parts of the objective medical evidence undermined her
16 subjective pain testimony; it is merely a conclusory statement that the objective medical
17 evidence, summarized earlier within the decision, does not support that testimony. *See Brown-*
18 *Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015). Under *Brown-Hunter*, the observations an
19 ALJ makes as part of the summary of the medical record are not sufficient to establish clear and
20 convincing reasons for rejecting a Plaintiff's credibility. 806 F.3d at 494. Instead, the ALJ
21 must link the medical evidence at issue to the Plaintiff's testimony. *Id.* Here, the ALJ did not
22 do so. Moreover, to the extent that the ALJ predicated her credibility determination in part on
23 "the absence of clinical signs and laboratory findings in the case record," this finding is not
24 supported by the record: as the ALJ herself acknowledges elsewhere in her decision, there are at
25 least some objective clinical testing results in the record showing lower thoracic levoscoliosis of
26 11 degrees and disc disease at the C5–C6 and C6–C7 levels. (AR 41–42, 312–17, 336, 386,
27 438.)

28 //

